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On the Limits of Exceptionalism: Principles and Practice in the Pursuit of Alternatives to Full EU Membership

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On the Limits of Exceptionalism: Principles and Practice in the Pursuit of Alternatives to Full EU Membership

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DRAFT PAPER

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COMMENTS WELCOME

Few states have been less uncomfortable with the relationship they have with the EU than the United Kingdom as a member and Turkey as an associate and would-be member. Both states currently find themselves questioning the substance and future of these relationships with domestic actors and, notably in the Turkish case, external EU voices actively advocating alternatives. While much discussion, particularly in the UK case, has focused on the advantages and disadvantages of particular existing arrangements (e.g. European Economic Area, Swiss bilateralism), this paper considers the broader principles and practices that the EU has to date either explicitly developed or implicitly established to govern the nature and substance of alternatives to [full] EU membership. It assesses the principled, practical and political limitations that exist in establishing alternatives to full membership for states seeking – or having sought for them – the accommodation of their exceptionalism. In doing so the paper considers the potential limits to a renegotiated EU membership for the UK and to an alternative short of full membership for Turkey. It also reflects on the precedent-setting consequences of any new arrangements that the EU might reach with either state for what forms membership and a relationship short of membership might take in the future.

Few states have been less uncomfortable with the relationship they have with the EU than the United Kingdom, as a member, and Turkey, as an associate and would-be member. Both states view themselves as special cases within the process of integration, whether for political, historical, cultural or geographical reasons. Both currently find themselves questioning the substance and future of these relationships. The UK government is seeking to renegotiate the terms of UK membership and is preparing the country for an in-out referendum in 2016-17. If the vote is to leave, a UK exit – a 'Brexit' – could follow. In Turkey, the President, Recep Tayyip Erdoğan, and his ruling Adalet ve Kalkınma Partisi (AK Party) have been sending mixed signals concerning further integration with the EU leading many commentators and observers (e.g. Alaranta, 2015) to

doubt whether the commitment to ultimate membership of the EU still holds. Raising further questions about Turkey's membership prospects is the evident opposition within the EU to the country's admission and the occasional calls for an alternative to be membership to be developed.

Much discussion around alternatives top to the *status quo* has in both cases focused on the advantages and disadvantages of particular existing arrangements the EU has with non-member states. Most prominent among these has been membership of European Economic Area (EEA), particularly for the United Kingdom (e.g. Etzold, 2013; Avery, 2012; UKIP, 2011; van Randwyck, 2012), but also for Turkey (e.g. Gylfason and Wijkman, 2010; Yildirim, 2014),¹ and others (Gould, 2008; Novak, 2015). The Swiss 'bilateral model' has also been proposed as an option for the United Kingdom (e.g. Etzold, 2013) and has support among some eurosceptic MPs (see Rennie, 2012). Neither of the two options nor indeed any other existing arrangement that the EU has in place, enjoys official governmental or evident broad popular support.² Underdeveloped ideas for a Privileged Partnership have long been rejected by successive Turkish governments (İçener, 2007; Macmillan, 2010). This raises the question of whether a new alternative form of relationship can be developed. Various proposals for partial and associate membership, gradual and modular integration have been advanced. While each may have its attractions and in theory offer a way forward in providing a more acceptable form of relationship, it is unlikely that any will be adopted. This has much to do with the extent to which the ideas would undermine well-established principles and practices governing the development of relations with states unable or unwilling to assume the obligations and commitments of full membership.

It is these established principles and practices and the potential limits they create for a renegotiated form of EU membership for the United Kingdom and for an alternative short of full membership for Turkey and any post-Brexit United Kingdom that form the initial focus of this paper. It thereafter outlines the key elements of and ideas underpinning a selection of alternatives to full EU membership while discussing the principled, practical and political obstacles to their adoption. A final section assesses the prospects for new alternatives to membership being established noting in particular the precedent-setting concerns that will cast their shadow over any EU discussion and negotiations.

1. Principles, Practices and Potential Limits to Alternatives to Membership of the EU

For the UK government in seeking a 'new settlement' to its terms of membership a key constraint on the flexibility of the other 27 member states is the shared understanding of what membership entails. If the boundaries of the understanding are crossed by the UK government in its negotiation efforts, a new settlement is unlikely to result and Brexit – or even 'Brexpulsion' (Begg, 2015) – could ensue. A key issue here is the sanctity of the norms underpinning the process of enlargement and what it requires and means to be a

¹ For earlier calls for Turkey to join the EEA, see Welfens (2004).

² For dismissals of the Swiss and Norwegian options, see Buchan (2012)

member state. As successive enlargement rounds have shown membership involves subscribing to not only the full range of legal obligations and political commitments already in place – the *acquis* – but also the EU's further development and the notion of 'ever closer union among the peoples of Europe'. In joining the EU, states become part of a dynamics not static entity and join not as partial members picking and choosing those elements of the *acquis* to which they wish to subscribe, but taking on, with a few minor exceptions, the entire body of existing legislation.

Such principles have been in place since the 1960s. At the Conference of Heads of State at The Hague in December 1969, the member states agreed to open negotiations on the basis that the applicant accept 'the Treaties and their political finality, the decisions taken since the entry into force of the Treaties and the options made in the sphere of development' (*Bulletin of the European Communities*, 1970: 13). Four months later there was further agreement on no exemptions being allowed. The Council agreed that '[t]he rule ... is that the solution to any problems of adjustment which arise [in negotiations] must be sought in the establishment of transitional measures and not in changes in existing rules' (cited in Puissochet, 1975: 6). The situation has not changed since. When in 1993 the negotiations which would lead to the fourth enlargement in 1995 were opened, the Danish Council Presidency, as chair of the negotiations, was clear:

'Accession implies full acceptance by your countries of the actual and potential rights and obligations attaching to the Community system and its institutional framework, known as the *acquis communautaire*. This includes:

- the content, principles and political objectives of the treaties, including those on European Union;
- legislation adopted pursuant to the treaties, and the case law of the Court of Justice;
- statements and resolutions adopted within the Community framework;
- international agreements and agreements concluded among themselves by the member states relating to Community activities.

The acceptance of these rights and obligations by a new member may give rise to technical adjustments, and exceptionally to temporary (not permanent) derogations and transitional arrangements to be defined during the accession negotiations, but can in no way involve amendments to Community rules' (cited in Avery, 1995: 14).

The EU's position in more recent sets of accession negotiations has been no less emphatic. Moreover, for many areas of the *acquis*, it is no longer a case of accepting rights and obligations, but actually demonstrating during and before accession negotiations are closed, 'legislative alignment with the *acquis* and ... a satisfactory track record in implementation of key elements of the *acquis* demonstrating the existence of an adequate administrative and judicial capacity' (Conference on Accession to the European Union – Croatia, 2005: para. 26).

Throughout its existence the EU has therefore demanded that acceding states subscribe to the full range of membership obligations contained in its constitutive treaties. Furthermore, acceding states have to take on the entire *acquis communautaire*. For early entrants, derogations and transition periods meant that adoption and implementation of the full *acquis* might not take place until some years into membership. More recently, with the 2004, 2007 and 2013 enlargements the emphasis has been on almost full adoption and implementation of

the *acquis* no later than accession and increasingly in most instances well before accession takes place, hence the need for ‘track records’.

Such norms and principles are not entirely reflected in the current nature and organization of the EU. In contrast to being the monolithic and unified whole of much popular myth, the EU is – and is increasingly – characterized by differentiation (Leuffen *et al*, 2012) and opt-out/opt-in arrangements (Adler-Nissen, 2014). The most obvious example is the eurozone with its 19 member state participants, others notionally obliged eventually to join, and others having (United Kingdom) or exercising (Denmark) some form of opt-out. The next areas are the area of freedom, security and justice (AFSJ) and Schengen where the UK and Ireland have various opt-out/opt-in arrangements. Denmark enjoys opt-out/opt-in arrangements regarding AFSJ as well. The result is an EU characterized not only by common policies and shared core activities, notably the single market, but also by multiple speeds and variable geometry. It is therefore a flexible entity. However, accessing such flexibility is the preserve of member states alone. Only they have the opportunity, through treaty reform negotiations, to secure opt-outs. For states acceding to the EU, the option of picking and choosing the terms of membership from an *à la carte* menu simply does not exist. Moreover, it needs to be stressed that the UK and Danish positions are very much the exception and their opt-out/opt-in arrangements were only cautiously and reluctantly agreed to by the other member states.³

Consequently, although exceptions to the established norms and principles of membership have been granted and continue to exist, those same norms and principles, as negotiations on and the terms of accession clearly demonstrate, are firmly embedded in shared understandings of what membership entails.⁴ Accession to the EU involves full acceptance of all the obligations of membership. States wishing to become members either accept all the obligations of membership or remain a non-member. There is no intermediate form of ‘membership’. And the fact that no alternative form of membership – e.g. associate membership – has ever been devised or even formally proposed – testifies to the embeddedness of this well-established principle.

This has clear ramifications for the development of any form of ‘membership’ that falls short of ‘full’ membership. Essentially, established practice suggests that the EU cannot conceive of any alternative form of membership other than ‘full’. The one caveat here concerns the rights that an acceding state may in future assume. In the EU’s framework for negotiations with Turkey, provision exists for ‘specific arrangements or permanent safeguard clauses’ (Conference on Accession to the European Union – Turkey, 2005: point 12), regarded in some quarters as providing an option to exclude Turkey from certain rights of membership, e.g.

³ The Irish position meanwhile is more one of enforced exceptionalism owing to its geographical links with the United Kingdom. Given its preference to maintain the Common Travel Area arrangements that significantly reduce border controls on movement between Ireland and the United Kingdom, the Irish government has been obliged to follow the UK in opting out of Schengen and of certain arrangements relating to the free movement of people and justice and home affairs cooperation.

⁴ As legal analyses show, there is also a range of established norms and principles of actual membership (e.g. solidarity, sincere cooperation) that member states are expected and required under the treaties to uphold. See XXXXXXXXXXXX.

free movement of people. The detail on options is lacking, but the underpinning assumption remains the full adoption of the obligations of membership. The norms and principles of membership are well established and firmly embedded. A similar level of embeddedness exists with regards to the forms of external relations that the EU has established with non-member states.

2. Principles, Practices and Potential Practical Limits to Relations with the EU

The focus for considering the limits on the form and content of any relationship short of membership that might accommodate the exceptionalism of Turkey and the United Kingdom is the EU's use of association as a means of regulating relations with non-member states. Here it is a case of comparing the arrangements put in place under the 1963 Ankara Agreement and later (1996) customs union with Turkey, the European Economic Area, the Europe Agreements (1993-2007) with the countries of Central and Eastern Europe, the Stabilization and Association Agreements (SAAs) with the countries of the Western Balkans, and the new association agreements with Ukraine, Moldova and Georgia. The nature and content of the associations created by these agreements provide valuable insights into the principles and practices that underpin the forms of integration which the EU is willing to establish. This is important since there is an implicit and misplaced assumption in much general commentary on the EU, its external relations and the UK debate on a new settlement and Brexit that a whole range of options are available. As any representative of a European state that has negotiated an advanced form of integration with the EU will testify, there are considerable limits to the negotiating flexibility of the EU. Principles, practices and precedents cast their shadows.

Similarly, any new settlement for the United Kingdom, for example, will set precedents for existing and future members of the EU. In any negotiation with a future UK government on changing the nature, form and substance of UK membership, the United Kingdom's EU partners will be mindful of the practical and reputational implications for the evolving EU. It will also be conscious of the expectations – and opportunities – that any new form of membership might create for other current or would-be members. If ideas such as partial, affiliate, associate and limited membership are realised they will set precedents.

2.1 The Flexibility and Principles of Association

The principles for association with the EU, essentially unchanged since 1957, are set out in Article 217 TFEU which currently provides for the conclusion by the EU 'with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure'.⁵ These provisions have been used to establish a range of relationships with

⁵ The original provision, contained in article 238 TEC stated: 'The Community may conclude with a third State, a union of States or international organizations agreements establishing an association involving reciprocal rights and obligations, common action and special procedures'. The adjustment from 'a third State, a union of States or' to 'one or more third countries or' was introduced by the TEU. The dropping of the 's' from 'procedures' is not recorded, but

European as well as extra-European states. Early agreements with Greece (1961) and Turkey (1963) were conceived as potential stepping-stones to membership; later agreements, e.g. the one establishing the EEA (1992), were regarded as much as an alternative or a waiting room for membership (Phinnemore, 1999). Increasingly, as with the Europe Agreements (1991-1996) and the SAAs (2001 onwards), the association arrangements they create are seen as preparations for eventual consideration for membership. In the case of the most recent association agreements (2014) with Georgia, Moldova and Ukraine, their extensive commitments and obligations in principle place them in a similar category even if any linkage with the possibility of membership is consistently avoided by the EU.

While each set of agreements is distinct, the associations they create share a clear set of norms regarding the nature and substance of the relationship which emerged in the 1960s and have been reinforced by each successive type of association created by the EU. The starting point is the emphasis on reciprocal rights and obligations coupled with common action managed through special procedures involving the EU and the associate. Providing an important context has been enlargement, the principles underpinning it (see above), and the EU's current 'strategy' towards membership applications and how it should or wishes to respond.

2.2 The Commission's *First Memorandum* and the Birkelbach Report

Early consideration of what form or forms association could or should take focused on the flexibility of the treaty provisions then contained in Article 238 of the Treaty of Rome. As the Commission pointed out in 1958, in its *First Memorandum concerning the problems raised by the establishment of a European Economic Association*, these allowed for both multilateral and bilateral associations and 'for all solutions' (Commission of the European Economic Community, 1959a: point 87). Consequently, some associations might entail only certain obligations being taken on; others might see the Treaty of Rome being taken over 'almost in its entirety' (*ibid*). There could also be 'special clauses exactly adapted to the situation' of the associated state. And the associated state would retain 'its full individuality on the political plane' and meet its commitments 'by its own independent action' (*ibid*), presumably a reference to its non-participation in the EEC's institutions. In terms of substance the First Memorandum remained vague.⁶

The more substantive analysis of what principles should underpin any associations created with European non-member states was provided by the Birkelbach report drawn up in 1961 by the European Parliament's Political Committee (European Parliament, 1962), thus coinciding with the EEC's first association negotiations, with Greece. While acknowledging the potentially far-reaching and wide-ranging nature of association, the report, which favoured membership as the norm for European countries, argued that

appears in the consolidated versions of the TEC and TFEU produced since the Treaty of Amsterdam. The plural has been retained in the French (and German) language versions of the consolidated TEC and TFEU.

⁶ The Commission's *Second Memorandum* was no more specific (see Commission of the European Economic Community, 1959b).

association arrangements should only be established with states that not only accepted but also contributed towards the political goals of the then European Economic Community. Any association would have to extend beyond trade and contain the balance of benefits and obligations referred to what is now Article 217 TFEU. However, given that the member states had given up certain rights in order to receive the benefits of membership, it would be inappropriate to grant similar benefits to associates unless they were willing to make concessions themselves. The idea that potential associates could pick and choose what they wished was unacceptable. Thus, any association with a European country would have to involve much more than a customs union. Indeed, the report advocated association covering other policy areas, specifically mentioning competition policy, the adoption of the Common External Tariff, as well as the fundamental elements of economic union. Such an arrangement would clearly be dynamic and lead to economic convergence between the EEC and the associate. It would thus be ideal for those wishing ultimately to become members. Moreover, in order to maintain uniformity and discipline, it was pointed out that associates would most likely have to abide by EEC decisions although they would not be granted an equal say in the Community's decision-making processes. Nevertheless, an institutional framework, including parliamentary contacts would be necessary.

Although the EP at this time lacked significant political standing and the report could in no way be regarded as an official statement of policy, it was generally welcomed within the Commission and certainly not rejected by any of the member states.⁷ Indeed, the principles it espoused would soon be evident in the extensive obligations assumed by Greece and Turkey as the first European signatories of association agreements with the EEC. They would also be evident in the bespoke institutional arrangements established to oversee and develop the relationship. With no participation in the EEC's institutions and no decision-making role regarding the obligations assumed, association was clearly not a form of membership. Institutional participation and voting rights were and would be the preserve of members.⁸ Moreover, the balance of rights and obligations would be extensive. The associations with Greece and Turkey both had a customs union as their basis and envisaged policy and legislative harmonization, the harmonization being of the associate's policies and legislation to the EC acquis. Analysts stressed the similarities between the demands of membership and those assumed by the associates. Oppermann (1962: 504) described the association agreement with Greece as an 'EEC Treaty in simplified form' (own translation); Flaesch-Mougin (1980: 65) refers to it as a '*mini-traité de Rome*'.

2.3 The Interlaken Principles

⁷ The Commission President, Walter Hallstein, indicated that he was in almost total agreement with the report's analysis. Indeed, Henig (1971: 37-38) suggests that some of the Report's content was inspired by people working in the Commission and the Report reflected 'almost uncannily' some of the known ideas of Hallstein.

⁸ According to Raux (1966), some early consideration was given to including associates in the Council. As soon as the Greeks submitted their application for association in June 1959, however, it was decided that associations should have their own Association Councils.

The prevailing consensus post-Birkelbach on the principles guiding association was never formally set down on paper. Nor has it been formally recorded since. However, it has long been evident in the arrangements for association and came close to being formalized in the context of the European Community's evolving relations with the then seven members of the European Free Trade Association (EFTA) in the 1980s. A Commission communication on implementing a Joint Declaration agreed by EC and EFTA ministers in Luxembourg on 9 April 1984 identified four principles that should be observed in the development of relations:

- a) Community integration and ... [the Community's] independent power of decision must under no circumstances be affected.
- b) The elimination of technical barriers to trade and the simplification of administrative formalities at Community-EFTA frontiers are a logical extension of the Free Trade Agreements and should be pursued parallel to the progressive integration of the Community's internal market.
- c) No specific field should be excluded a priori for cooperation. The Community must, for example, also step up coordination with EFTA countries in fields such as transport or environmental policy, which of their nature cannot be limited by frontiers and are also issues of great concern to ordinary people.
- d) It will only be possible to progress towards achievement of a wider European market if the costs and benefits involved are shared equally. Measures taken in parallel must involve real reciprocity' (Commission of the European Communities, 1985: point 5).

The first and last of these would soon feature in the often forgotten Interlaken principles that the Commissioner for External Relations, Willy de Clercq, set out in a meeting in Interlaken of ministers from EC and EFTA member states on 20 May 1987. As far as the Commission was concerned, the development of EC-EFTA relations – a process that would ultimately lead to the establishment on 1 January 1994 of the European Economic Area (EEA) – would be governed by three principles:

- priority for the EC's own internal integration
- the safeguarding of full decision-making autonomy for the EC
- a balance of benefits and obligations would be maintained (*Agence Europe*, 1987)

None of the principles would have caused any surprise among EFTA member states. According to a senior Commission official, the EC in its relations with the EFTA countries had for a long time been consistent in its insistence on respect for its autonomy (Hayes, 2011: 22). According to a Finnish official: 'anything else 'would have been rather odd'' (Kuosmanen, 2001:7). The third Interlaken Principle – of reciprocity and a balance between rights and obligations – was well-known too, not least from the treaty provisions on association. Consequently there appeared to be no notable opposition within the EC to the principles being adopted. As much was made clear by the member states when the General Affairs Council on 20 July 1987 endorsed the principle by recording 'its full support to the guidelines for future co-operation agreed on at the Interlaken meeting between the Commission and EFTA Ministers (May 1987) and to the principles on which co-operation between the Community and EFTA were based' (Council of the European Communities – General Secretariat, 1987: 7).

2.4 The European Economic Area Agreement

Although subsequently, Jacques Delors, President of the Commission, referred to the possibility of ‘more structured [EC-EFTA] partnership with common decision-making and administrative institutions’ (Delors, 1989: 76), thereby suggesting that the EC was willing to compromise on its decision-making autonomy, the Commission’s language quickly shifted to ‘decision-shaping’. Delors reference to ‘decision-making’ was inadvertent. Moreover, as exploratory talks soon revealed, it was clear that the EC was never going to accept the EFTA desire for ‘genuine common decision-making mechanism’ whereby the membership of relevant EC decision-making bodies would be increased from 12 to 19 delegates the purpose of adopting decisions relating to the EEA. The EC was, according to EP researchers, ‘adamant that its decision-making autonomy must not be compromised ... [its] insistence on the principle of autonomous internal decision-making excluded any form of intervention by non-member states outside the Community structure’ (European Parliament Directorate-General for Research, 1993: 12).

It could have surprised few, therefore, that the Court of Justice (ECJ) in Opinion 1/91 on the initially concluded EEA Agreement upheld the institutional autonomy of the EC by objecting to the structure and competences of a the proposed EEA Court comprising ECJ and EFTA judges. Its argument was that the legally binding interpretations of an EEA Court could adversely affect the autonomy and exclusive jurisdiction of the ECJ. Consequently it ruled that the ‘system of judicial supervision which the agreement proposes to set up is incompatible with the Treaty establishing the European Economic Community’ (Court of Justice, 1991: 6112). Revisions to the EEA Agreement were duly negotiated, the outcome of which was that the EEA court was abandoned in favour of *de facto* ECJ jurisdiction over the EEA.

In line with the principle of the safeguarding the full decision-making autonomy for the EC, no provision was made for judges from the EFTA states to sit on the ECJ for matters concerning the EEA. Nor did the EEA Agreement provide, despite the obligation to take on future legislation to ensure the homogeneity of the EEA, for any direct participation of officials, ministers or parliamentarians from the EFTA states in the activities of the Commission, Council or Parliament. Instead, officials from the EFTA states would be involved in a consultative decision-shaping mechanism.

2.5 The Europe Agreements and beyond

The insistence of the EC – now EU – on upholding the principles set out at Interlaken was also evident in the new associations being created thorough the Europe Agreements with the countries of Central and Eastern Europe. Following the precedents set by earlier bilateral association agreements, for example those with Greece and Turkey, these involved adaptation to the *acquis*. Although the language of each associate’s commitments referred more to legal approximation as opposed to harmonization, the direction of the adaptation remained unchanged: to the *acquis*. Moreover, there is no role in either the EU institutions or EU decision-making procedures. Even decision-shaping *à la* EEA was not envisaged.

The Europe Agreements understandably attracted criticism, not least because they failed to offer the clear membership perspective that the countries of Central and Eastern Europe desired. They also failed to create a sense of involvement in the mainstream process of post-Cold War European integration. The EU was failing to facilitate the countries' 'return to Europe'. Such shortcomings were eventually addressed in through decisions of the European Council at Copenhagen in June 1993 which launched a novel 'structured relationship' with these countries that would involve a 'reinforced and extended multilateral dialogue' conducted through advisory meetings between the Council and the countries concerned on matters of common interest, including those with 'a trans-European dimension, including energy, environment, transport, science and technology' the common foreign and security policy, and justice and home affairs (Council Secretariat, 1993: 7.A.iii and Annex II).

This structured multilateral dialogue – which was sustained until 1997 – was unprecedented; no non-member state or group of non-member states had previously been offered the opportunity to attend regular formal dialogue meetings with members of the Council. Dialogue was generally restricted to bilateral association bodies, such as Association Committees, Association Councils and Parliamentary Association Committees. However, experience of the structured dialogue was not particularly positive. While the dialogue was welcomed, Kiss (1995: 280) suggests that its contents 'never offered any opening towards a genuine political cooperation'. Meetings were often of a 'purely consultative, or advisory' nature, while lower-level contacts remained 'marginal and accidental' with agendas showing 'signs of automatism'. Similarly, Regelsberger (1995) argues that for CEE participants dialogue involved more the receipt of information than even an exchange of views.

The experience of structured multilateral dialogue has not been repeated. Instead, institutional arrangements for associates have reverted to the standard bilateral mechanisms of an Association Council, and Association Committee and Joint Parliamentary Committee. Such arrangements are included in the SAAs and the more recent association agreements with Georgia, Moldova and Ukraine. They are, however, supplemented with a number of multilateral dialogue mechanisms via the EU-Western Balkan Forum and the Eastern Partnership. Their effectiveness is regularly questioned, not least because of the political commitment of the EU the mechanisms, as reflected, for example, in the number of heads of government or state who attend 'summits'.

Clearly, current institutional arrangements governing relations between the EU and its European non-member states continue to follow the principle that the EU safeguards its decision-making autonomy. Non-members are not given participation rights in any EU institution and with the exception of the EEA members do not even have accession to decision-shaping, let alone decision-making, mechanisms. And this is despite the fact that the obligations non-members assume continue to increase. In part, this is due to the manner in which the *acquis* has expanded between each set of association agreements. It is also partly due to the increasingly prescriptive nature of the agreements being signed. Whereas the SAAs Agreements compared broadly to the Europe Agreements, the more recent association agreements with the Georgia, Moldova and Ukraine are strikingly

more extensive and detailed in what they require of the associates. For example, whereas the most recently signed SAA (with Bosnia-Herzegovina) contains 135 articles and runs to 546 pages, the association agreement with Moldova has 486 articles and is 735 pages long.

3. Alternatives to 'full' Membership

Having enlarged seven times and established associations with numerous European non-member states, the EU not only has considerable experience of negotiating membership and advanced forms of integration but also established a range of practices and principles governing the nature and form of both membership and association. These practices and principles are firmly established as are the norms and expectations of membership. This has not, however, prevented the development of alternative ideas for how a state seeking a relationship short of membership might have its interests and preferences accommodate. Nor has it prevented the development of proposals for alternatives to membership for states that the EU may not ultimately wish to admit. Furthermore, it has not prevented political pressure for alternatives to the *status quo*.

The debate surrounding the future of the UK's membership of the EU is the most obvious case in point. It has long seen eurosceptic forces in particular arguing in favour of a redefined, essentially looser form of relationship. While hard-line eurosceptics, notably supporters of the United Kingdom Independence Party (UKIP) and, as has become increasingly evident, certain MPs from and supporters of the Conservative Party, favour exit from the EU and a new relationship as a non-member state, softer eurosceptics and self-professed 'eurorealists' and 'europragmatists' advocate a looser form of membership. The focus is very much on exemptions from existing and future obligations and policies. Rarely does any looser arrangement proposed by campaigning groups involve change in the institutional arrangements governing membership. However, for a range of commentators and analysts mindful of the principled and political limits of granting a member state an excessive number of exemptions – and so undermine/disturb the balance of rights and obligations on which membership rests – an adjustment of procedural and institutional rights should accompany any loosening of obligations. This is evident in various proposals for forms of affiliate, partial and associate membership. Before considering these, however, there is the matter of what form a renegotiated existing membership might take.

3.1 Renegotiated Membership

In the UK debate on membership, various proposals have been advanced setting out what form renegotiation should take. The most developed are those published in 2013 by the Fresh Start project, a group of Conservative MPs eager 'to articulate and negotiate a new and different relationship for ourselves whilst remaining a full member of the EU' (The Fresh Start Project, 2013: 3). The proposals are wide-ranging

and relate in the main to reform of policy areas,⁹ although a number of institutional reforms and treaty changes are sought.¹⁰ The *Manifesto for Change* is very much about retaining all the privileges of membership, reducing EU activity and securing where necessary special arrangements for the UK. Nowhere is there any reference to altering the formal status of membership or of relinquishing any rights in exchange of few obligations. Somewhat disingenuously the Fresh Start authors claim their claims 'is not about 'cherry picking'; its goal is rather to articulate the necessary reforms that would lead to a more sustainable relationship for the UK in the EU'. The latter may be true; but the former certainly is not. The proposals essentially reflect an *à la carte* approach to continued membership. Given the norms of membership, the exceptionalism envisaged in such proposals has little chance of finding favour among the EU's institutions and, more important in terms of negotiations, other members states.

3.2 Affiliate Membership

Of the new forms of membership mentioned, the first to be proposed was 'affiliate membership' in 1991. The idea is associated with Frans Andriessen, then Commissioner for External Relations, and was aimed at the 'new democracies' of Central and Eastern Europe and 'long-standing partners' of the EC (Andriessen, 1991a). The novelty of the proposed arrangement was it would provide affiliate members with 'a seat at the Council table on a par with full members in specified areas, together with appropriate representation in other institutions, such as the Parliament'. Furthermore, Andriessen envisaged affiliate members taking part 'fully' in foreign policy decisions coming within the Community sphere and having 'a link with the European Monetary System and with the progressive stages through which economic and monetary union is to be achieved'.¹¹ Moreover, affiliate membership could be extended to EC activities in diverse areas, such as 'transport, energy, the environment, research and development' with the precise coverage 'to be agreed on a case by case basis'. The outcome would be that each country could pursue integration 'according to its capacities and needs'. Andriessen later offered clarification of what it might entail. Affiliate membership would be a 'special kind of membership' enabling countries concerned 'to contribute to policy formulation in areas considered to be common European interests' (Andriessen, 1991b). This could involve the consultation of affiliate members through 'enlarged sessions' of the Council and the EP. The range of issues now included telecommunications, environmental standards, and Europe's 'common cultural

⁹ The policy areas are: trade; regional development; the Common Agricultural Policy; the Common Fisheries Policy; social and employment law; financial services; energy; policing and criminal justice; immigration; and defence.

¹⁰ These are: an emergency brake for any member state regarding future EU legislation that affects financial services; repatriation of social and employment law competences to member states (or alternatively a UK opt-out from existing social and employment law, and an emergency brake for any Member State regarding future EU legislation that affects this area); a UK opt-out from all existing EU policing and criminal justice measures; a new legal safeguard for the single market to ensure that there is no discrimination against non-Eurozone member interests; and the abolition of the EP's Strasbourg seat and of, the Economic and Social Committee and the Committee of the Regions (The Fresh Start Project, 2013: 3).

¹¹ On participation in foreign policy decisions, Andriessen did acknowledge that neutrality might arise as a problem in the context of security-related decisions. He responded that 'this question already exists in the Community of Twelve and a flexible formula could allow for occasional opting out'.

heritage'. Andriessen also suggested that affiliate members could peg their exchange rate to the ECU thus 'giving rise to new forms of cooperation'.

Andriessen's idea of affiliate membership – which he also referred to as associate membership (see Andriessen, 1991b) – failed to attract support, not least because many EC officials viewed the idea as unworkable and the governments of the countries of Central and East Europe viewed it as an unacceptable offer of 'second-class' membership (Smith, 2005: 761). Equally, there were misgivings about how the extent to which the idea, if implemented, would bring into question the principle that the full decision-making autonomy for the EC be safeguarded. Given established practice and the prevailing consensus on safeguarding the EC's decision-making autonomy, the rejection was to be anticipated. It has not, however, prevented more recent ideas for forms of association or membership, some of which involve some decision-shaping and potentially decision-making role for the state concerned.

3.3 Partial Membership

Among these ideas are those brought together under the rubric of 'partial membership' which Emmanouilidis (2008: 11-12) views as transcending the classical association and classical enlargement paradigms. Partial membership would involve full integration into one or more specific EU policy areas whether political (e.g. CFSP/CSDP, Schengen) or economic (e.g. internal market, energy and climate policy, euro). As such, partial members would become '*de facto* members in the respective field and as such fulfil similar obligations and enjoy similar rights as any other EU country'. They would therefore contribute to the policy-relevant budget and 'enjoy partial access to the Union's core institutions'. What such access would entail is not always clearly stated. As with the current EEA, the emphasis is on decision-shaping as opposed to decision-making. In his proposal for 'junior membership', for example, Altmann (2005) envisages only co-determination of, not co-decision on, relevant policies and expressly rules out the partial member nominating a Commissioner.

Such ideas of partial membership, have rarely, if ever, attracted much support among either disgruntled members or non-members, primarily because of the absence of a decision-making role.¹² This is clearly acknowledged in the recent discussion of *EEA-plus* as an option for the United Kingdom. The analysis provided by *Open Europe* states categorically that 'there is one absolutely vital element that has to be added [to the EEA] if this is going to work for the UK: voting rights' (Open Europe, 2013). A workable *EEA-plus* would involve access to the single market complete with a vote on all relevant laws. This need not entail participation in the EU's institutions but instead a genuine decision-making role for the EEA Council (which comprises EU and non-EU EEA participants). Alternatively decisions could be made by a majority in

¹² In 2012 suggestions were made that Turkey should be offered partial membership instead of the underdeveloped 'privileged partnership' to which Ankara had long been voicing opposition. Critics rightly maintained that the existing EU-Turkey relationship already amounted to partial membership, given the levels of integration involved in the customs union (see Yurttagül, 2012). For a discussion of ideas for privileged partnership, see İçener (2007), Maurer (2007), Macmillan (2010).

the Council and 'a comparable EEA body' (ibid). A similar suggestion has come from Chopin who envisages a revised EEA Agreement granting non-EU members of the EEA 'equal voting power ... over common policies to [sic] which they participate: most notably the single market, R&D programmes and cohesion policy' (Chopin, 2013: 10).

A further option is the idea of 'abgestufte' or 'gradual' integration as advanced by Karakas (2005). Developed with Turkey in mind, this would involve gradual sectoral integration in three phases. The first would cover education, culture, research and technological development, infrastructure and the environment; the second, finalisation of the customs union and integration into the Single Market; the final phases, economic and monetary union and closer cooperation on Justice and home affairs matters. There would also be the option for far-reaching political integration and eventually full membership. Sectoral integration would include decision-making rights by no veto right.

A final form of partial membership is Maurer and Haerder (2007) proposal for 'modular integration'. The idea is based on the EEA with permanent opt-ins into sectoral aspects of EU membership which would involve participation in the Council, possibly with a veto power, potentially co-decision rights in the EP. Accompanying this would be an end to enlargement policy. Crucial to the effectiveness of this approach would be revised institutional arrangements with the authors recommending immediate or phased participation in certain Council formations and full membership of the European Council. There would, however, be no right to nominate a Commissioner or a judge to the Court or be involved in the European Investment Bank. Involvement in the ECB would be as per Eurozone outsiders, and participation in the Committee of the Region's would be automatic.

While such alternatives may be theoretically workable, they would undoubtedly run up against the established political consensus on the inviolability of the EU's decision-making autonomy. Moreover, one should also recall the ECJ's reasoning in Opinion 1/91 (see above). Assuming it would be called on to consider the legality of a partial membership arrangement, the Court could be expected, following Opinion 1/91, to rule any institutional arrangements that threatened not just the legal but also the political autonomy of the EU as incompatible with the TEU and TFEU. Here, it should be noted that not only does Article 217 TFEU on association fall within the jurisdiction of the ECJ, but also Article 50 TEU on withdrawal and the agreements governing the process which could provide the legal basis for establishing a form of partial membership for a departing member.

3.4 Associate Membership

In addition to partial membership, there exists the notion of 'associate' membership. In practice, it is simply another form of partial membership, although there are contrasting ideas of what shape it should entail. Here, it is treated separately from 'partial' membership, however, because in current discourse it is a more

extensive form of partial membership than those already mentioned.¹³ The idea of associate membership has most recently been advanced in the context of the UK debate on its future in the EU, although the ideas being advanced are equally inspired by attempts to devise an alternative to membership for Turkey given the seemingly irretrievably stalled state of its accession negotiations.

Associate Membership I – Duff

Instrumental in advancing the idea of associate membership has been Andrew Duff, until 2015 an MEP. It was at his urging that the EP's Committee on Foreign Affairs in September 2012 recommended that 'at the next general revision of the Treaties ... [the EP] should initiate a discussion on the introduction of a new category of associate membership of the Union' (European Parliament, 2012a: 38).¹⁴ According to Duff, a new Article 49a TEU should be drafted to sit alongside the existing provisions for accession to (Article 49 TEU) and withdrawal from (Article 50 TEU) the EU.¹⁵

Although motivated by various enlargement-related desires – e.g. to provide an interim form of membership to the likes of states seeking to join the EU for states, or an upgrade to those intent on remaining outside the EU – Duff argues that 'associate membership' could be offered to the United Kingdom as it seeks to loosen its ties with the EU (Duff, 2013).¹⁶ His proposal for associate membership would require 'fidelity' to the EU's values and principles contained in Article 2 TEU as well as to the principle, of sincere cooperation set out in Article 4(3) TEU. In terms of policy engagement, conditions

¹³ There are exceptions, however. In some journalistic commentary and in UK government circles, it remains ill-defined and more a politically convenient term that might be used simply to 'rebadge' the UK's renegotiated membership of the EU (see *The Sunday Times*, 2015).

¹⁴ Although endorsed by the Committee on Foreign Affairs, the recommendation did not secure the support of MEPs generally and so did not feature in their Resolution of 22 November 2012 on Enlargement: policies, criteria and the EU's strategic interests (European Parliament, 2012b)

¹⁵ Duff and others proposed that the article be drafted by a convention to be called in 2015 following the 2014 EP elections. The proposed text read: (1) Any Member State which continues to respect the values referred to in Article 2 and is committed to promoting them may notify the European Council of its intention to become an associate member of the Union. The negotiations shall be conducted by the Commission on the basis of a mandate agreed by the Council, after consulting the Parliament. (2) The conditions of associate membership and the adjustments to the Treaties on which the Union is founded shall be the subject of an agreement between the Member States and the Associate Member State. The agreement shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after consulting the Commission and after obtaining the consent of the European Parliament. The agreement will enter into force once it has been approved by the Member States and the Associate Member State in accordance with their respective constitutional requirements. (Duff, 2012: 68-9)

¹⁶ Duff previously proposed the establishment of 'associate member' status during the European Convention in 2002-03. Associate members would be those democratic non-member states to which the EU had extended provisions of the constitution of Duff's proposed *Federal Union of Europe* (European Convention, 2002). Associate membership would also be open to any existing EU member state deciding not to adopt the proposed the draft constitution. It was also envisaged that the rights of an associate member could be revoked or reinstated on a proposal of the Commission or on an initiative of the Court with the approval of a three-quarters majority of the member states in the Council and by an absolute majority of Members of the European Parliament. He made a further call for associate membership in advance of the negotiations that led to the Treaty of Lisbon. Associate membership could provide a 'safety valve' for any member state opting to reject the Constitutional Treaty but willing to retain close links with the EU (Duff, 2007).

would be determined on a 'case by case basis', depending not least on whether a state was seeking to accede or leave the EU. However, associate membership would have at its core the EU's customs union, by extension adoption of the EU's Common External Tariff and the Common Commercial Policy. Participation in the internal market need not be full, but should not risk the internal market's operation. Participation in the EU's external action and international agreements concluded by the EU would also be open to the associate member, although again only in so far as the EU's cohesion and the scope of any positions it adopted would not be prejudiced. Associate members would also be able to draw on the services of the Commission and EU agencies for the delivery of specific policies or parts of them. Arrangements would, echoing the TFEU's existing provisions on association, involve 'reciprocal rights and obligations as well as the possibility of undertaking activities jointly' (Duff, 2013).

Duff's ideas regarding institutional arrangements also have echoes of existing association principles in so far as there is no provision for any decision-making role in the Council or European Council. However, Duff does envisage observer status being granted for government representatives in the Council when the latter's agenda relates to a policy area in which the associate member participates. Government representatives from the associate member would also be involved in 'appropriate' Council Working Groups. Representatives of the national parliament of the associate member would have observer status in the EP; and the associate member would enjoy observer status in comitology processes. No observer status would, however, be granted in respect of the Commission or the European Council. Instead, associate membership would entail inclusion in the 'relevant' consultation processes of the Commission' and participation in an annual multilateral meeting of the European Council and the heads of state or of government of associate members. In exchange for 'acknowledging' the jurisdiction of the ECJ, the associate member would, however, be able to nominate a judge in the same way as a member state. The associate member would also be able to intervene in cases before the ECJ and institute third-party proceedings where a judgement has been prejudicial their rights (Duff, 2013).

In the case of the United Kingdom, the attraction of associate membership, according to Duff, would be that it provides an alternative to withdrawal that can accommodate a UK desire to remove itself from certain aspects of EU integration. As he comments, it would be based 'essentially on those aspects of the single market which the British find palatable and its erstwhile partners tolerable' (Duff, 2012: 55). A further attraction of the proposed associate membership is that it could also prevent a UK veto of the EU's constitutional evolution. And establishing associate membership status need not wait for an amendment to the TEU; it could be negotiated as the post-withdrawal settlement envisaged in Article 50 TEU.

As press reaction to Duff's proposals was quick to point out, as an associate member, the United Kingdom would become in effect a 'second-class' member, lose its veto over policy developments, including those affect the United Kingdom, and forego MEPs (*Daily Mail*, 2013). And this assumes that such a new form of membership could be negotiated. There is also the question of whether it would pass the Council following

Opinion 1/91. Past reasoning must cast doubt on the Court's willingness to accept an arrangement whereby one of its members was from a state other than a full member state.

Associate Membership II – Verhofstadt

Also picking up the associate membership has been Duff's fellow euro-federalist, Guy Verhofstadt. In his recent 2015 response to the UK desire to renegotiate the terms of its membership, Verhofstadt (2015) advocated re-casting the EU and establishing two types of membership: 'full' and 'associate'. The latter, aimed at the UK, would provide be a relatively simple affair: access to the internal market with free movement of goods, services, capital and people with the UK only having to apply 'those rules and regulations necessary to create a level playing field in internal trade'. As for institutions there would no longer be full representation nor full voting rights. The exact arrangements envisaged were not set out.

Associate Membership III – extended associate membership

Maurer and Haerder (2007) summarize the proposal of Quaisser and Wood (2004) for 'extended associate membership'. Developed with Turkey in mind, this would involve full participation in the EEA supplemented with additional bodies including a Security and Defence Council for CFSP matters and a Consultative Committee for economic and social problems. Later participation in economic and monetary union would also be open. Participants would have a presence in the Council, but no decision-making rights. They would also have access to the Structural Funds and the Cohesion Fund.

4. Prospects and Precedents

The history of the EU does not bode well for the development of alternative forms of membership. A key principle, respected throughout the history of the European Communities and now the EU has been its institutional and decision-making autonomy. Whereas in terms of regulatory and policy integration the boundaries between membership and non-membership have become increasingly blurred and in many instances (e.g. the EEA) indistinguishable, as far as participation in the EU's institutions and decision-making process is concerned, the difference remains as clear as it has ever been. While a number of forms of 'decision-shaping' have been developed (e.g. in the EEA and more recently regarding the Schengen involvement of Norway and Iceland),¹⁷ membership of and participation in the EU's institutions and involvement in actual decision-making process is strictly reserved for member states.¹⁸ Despite pressures for more flexible structures

¹⁷ This has established a precedent for non-member involvement in the work of the EU Council. Through a 'Mixed Committee' made up of both EU and non-EU members Norway and Iceland discuss the development of new Schengen *acquis*, which is then introduced into the EU system for adoption according to the usual, and exclusively EU, procedures.

¹⁸ The only exceptions are acceding states which, once their Treaty of Accession has been signed, are granted 'observer' status in the EU's institutions. Observer status is held for the period up until formal accession or such time

and forms of integration and in the face of periods of unprecedented pressures to enlarge, notably in the 1990s and 2000s, the principle that seats and votes are reserved for members alone has held.

The prospects for partial, affiliate and associate membership are therefore not good. On the one hand, the established practices, norms and principles of the EU effectively rule out offering any such alternative form of membership to any state. On the other hand, there is no appetite on the part of any existing member state and the United Kingdom in particular to surrender any existing institutional membership or voting rights. Non-participation in Eurogroup meetings may be tolerated as the political cost of a Eurozone opt-out – even here successive UK governments have been determined to ensure that there is no consequent caucusing on the part of the Eurozone members – but any reduction in established membership rights is not up for discussion. And of course, existing members have a veto over any change to the status quo. It follows, that beyond the current differentiated levels of integration that characterise the EU and have evolved through negotiation by *existing* members, there appears to be little prospect of new forms of EU membership being developed. The future for states seeking accommodation is either in current alternatives to membership or modified versions of them. None, however, is politically attractive given the considerable and increasing obligations the arrangements entail and the absence of a corresponding decision-making role.¹⁹

This clearly has not prevented discussion of alternative forms of members, especially in the United Kingdom. Nor should it have. A striking feature of these discussions, however, is not only their tendency to overlook established practices, principles and norms, but also their narrow and insular focus on the UK case. Although the UK government's presentation of aims and interests has been increasingly couched in terms of what would be good for the EU as a whole, it is essentially a selfish debate. Consequently, the implications for the EU and for its relations with non-member states of the any new settlement – or a new form of relationship outside the EU if the new settlement is rejected in the referendum – rarely receive attention. Within the EU, however, the implications are being closely considered. They attract attention in non-member states as well. For as much as accommodating UK exceptionalism requires an new settlement of sorts of the terms of the United Kingdom's membership of the EU, the outcome will set precedents for existing members and non-members alike.

In terms of what 'EU membership' means, a major concern of supporters of the status quo is that the debate over which UK demands to accommodate and how threatens to challenge the EU's core foundational principles and open up a Pandora's box of compromises carefully negotiated during the course of successive rounds of treaty reform over the last thirty years. Just as the UK's opt-out/opt-in arrangements relating to the eurozone, Schengen and the area of freedom, security and justice set precedents of sorts for existing

as the state signals, following a failure to ratify the treaty of accession, that it will not be taking up membership, as has twice been the case with Norway in 1972 and 1994.

¹⁹ This has long been evident in informed consideration of the EEA and Swiss bilateralism (Open Europe, 2012) and, in the Turkish case, of ideas for 'privileged partnership' (İçener, 2007; Macmillan, 2010).

members,²⁰ the revised terms of membership that emerge from the current negotiation of a new settlement to UK membership of the EU will set precedents that will attract the attention of other states wishing to decrease their commitments and obligations as members of the EU.²¹ The variable geometry of the EU would be extended and the potential for undermining integration and encouraging disintegration would be increased. With more states opting out of areas of existing and further integration, the EU would move even further in the direction of a becoming an *à la carte* and multi-tiered entity as opposed to retaining its essential multi-speed character.

If a new settlement is secured and approved in the referendum the form and substance of the UK's membership would no doubt also attract the attention of European non-member states, whether currently seeking membership or not. Once again precedents would be set, although how attainable they would be in any accession negotiation is far from certain given the EU's established insistence that new member states adopt the full *acquis*. If, as a result of its referendum, the United Kingdom were to leave the EU, however, the new 'post-Brexit' relationship that would – presumably – be negotiated would more likely set precedents that European non-member states could realistically invoke. In many respects, it is the alternative to membership that will be most carefully negotiated by the EU.

Whatever 'post-Brexit' arrangement might be put in place, it will, assuming the UK seeks to retain full access to the single market, set precedents of particular interest to Norway and Iceland, as well as Switzerland. Here, an overriding interest will be in the institutional and decision-making arrangements where, if – a big 'if' – the United Kingdom is granted participation rights and/or a vote, it would be difficult to see how similar arrangements could not be granted to these other states given the extent of their contractual obligations towards the EU. With the autonomy of the EU's institutions and decision-making being broken, a justifiable case could also be made for the same or similar arrangements to be put in place for Norway, Iceland and Switzerland with regard to other areas of the *acquis* in which they participate but the United Kingdom would not, e.g. Schengen. Limiting participation to existing consultative and decision-shaping mechanisms could no longer be justified. The same would apply to Turkey's relations with the EU. How could the EU legitimately exclude Turkey from institutional and decision-making arrangements granted to one or more other member states when Turkey is obliged to assume similar or indeed greater obligations? If participation and/or votes are

²⁰ The emphasis here is on 'precedents of sorts' and on 'existing members': the former because the precedents have not to date been followed by others states; the latter because the negotiation of opt-outs remains the preserve of recalcitrant members states as opposed to acceding states.

²¹ Although various member states have expressed understanding of and, in some instances, sympathy for some of the ideas floated by the UK government, none has as yet openly aligned itself with the UK position. Indeed, on any compromising of the principle of the free movement of workers states have been vocal in their opposition. This includes Hungary, where the government of Viktor Orban is seen as an obvious potential supporter of Cameron's renegotiation efforts, particularly where formal exemptions from ever-closer union, a formal declaration on the defence of national sovereignty, and preventing the caucusing of eurozone members and the subjecting of non-eurozone members to their decisions (O'Sullivan, 2015).

granted in relation to the single market *acquis*, how can they be denied in the case of a non-member state that has signed up to the customs union?

Given the consistency with which the EU has long upheld its decision-making autonomy, it would seem unlikely that it would contemplate opening up its institutional structures to the participation of non-member states, even if one or more of them is a former member state. However, consideration needs to be given to the political, economic and reputational value of and need to secure a post-Brexit relationship acceptable to the United Kingdom. This may lead to some flexibility on the part of the EU, especially if some form of institutional and decision-making involvement were to be a red-line issue for a UK government negotiating a post-Brexit arrangement, as it most likely would.

Conclusion

Throughout its history the EU has been faced with the challenge of accommodating the interests and preferences of member states and non-member states alike. The situation it faces today, with the United Kingdom seeking to renegotiate the terms of its membership, is particularly challenging; with the exception of the 1975 UK referendum, never before has the EU been faced with the real possibility of a member state leaving. Moreover, the 'Brexit' debate is taking place against a backdrop of very limited enthusiasm for enlargement particularly where, but not just, Turkey is concerned. This once again raises the question of what alternatives to the *status quo* might be available to or be established for states seeking a new form membership or association.

The analysis of established arrangements and past debates presented here reveals a high degree of consistency in the approach the EU has adopted throughout its history and that of the Communities before it regarding the principles underpinning both membership and the development of relationships with non-member states. A range of principles, practices and norms have been firmly established. In the case of membership, the norm is full adherence to the *acquis* with the possible negotiation of opt-outs only being possible in exceptional cases once membership has been achieved. For European non-member states, the reality of relations with the EU has increasingly been one of as full adoption of the *acquis* as possible but without any institutional participation or decision-making role. In terms of policy and legislative alignment, the difference between members and non-member has becoming increasingly blurred as to be almost meaningless. In terms of decision-making, however, the difference between members and non-members remains as stark as ever. Significantly, the EU has never compromised on its decision-making autonomy.

This does not bode well for the prospects of any state's perceived or actual exceptionalism being accommodated through the development of one or more of the new alternatives to membership that have been discussed here or may in future be proposed. This is important not only for debates on what possible form a post-Brexit relationship for the United Kingdom with the EU might take, but also the UK government's

prospects for negotiating a 'new settlement' to membership. It is also important in the context of how Turkey's relationship with the EU might involve in the likely absence of any significant progress towards accession. Unless the EU abandons the principle of its own decision-making autonomy, the future of relations is unlikely to be anything other than a modified or repackaged version of what already exists.

And then there is the issue of precedent-setting. Just as any debate over new forms of membership or association will be conditioned by established principles, practices and norms, so too will they be conditioned by the precedents they might set. Again, individual states seeking an accommodation with the EU of their avowed exceptionalism have to be aware that whatever arrangement they might secure sets precedents that other states – members and non-members alike – could well seek. This is particularly the case with regard to possible participation in the EU's institutions and a decision-making role. The focus on how any one state's exceptionalism can be accommodated needs therefore to be placed in the wider context of how the EU can and is willing to accommodate the interests and preferences of all members and non-members. To do otherwise would be ignore the real limits on what can be achieved in terms of a new relationship and to run the serious risk of negotiating failure.

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